

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-1550

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NO. 74-1550

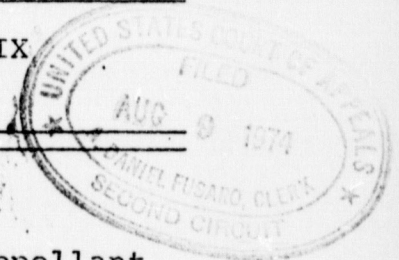
THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
CARMINE TRAMUNTI, et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANTS-APPELLANTS' JOINT APPENDIX
Vol. T(42) - Pages 5543 to 5619

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2 UNITED STATES OF AMERICA

3 vs.

4 CARMINE TRAMUNTI, et al.

6 New York, March 13, 1974,

7 10:00 a.m.

8 Deliberations resumed.

10 - -

11 (At 11:15 a.m. a note was received from
12 the jury.)

13 (In open court.)

14 THE COURT: Mark this for identifica-
15 tion.

16 (Court's Exhibit 111 was marked for iden-
17 tification.)

18 THE COURT: Court's Exhibit No. 111 for
19 identification is a note:

20 "Your Honor: We are now," underlined, "ready
21 to hear our request on William Alonzo.

22 "Thanks. Sincerely Lucy Hare, Forelady."

23 All right, bring in the jury.

24 MR. PHILLIPS: Your Honor, before the
25 jury is brought in I would just like briefly to be heard

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again. It seems that the note where they asked for the Alonzo testimony has two crucial words in it. One is "We would like to hear all the testimony of Mr. Alonzo" and the other is the word "again." It seems to me at the very least that creates an ambiguity that ought to be cleared up with the jury as to whether they want to just hear the testimony of Harry Pannirrello as to Mr. Alonzo or other testimony that relates to Mr. Alonzo. I would respectfully ask the court to inquire of the jury which they mean in that respect.

MR. SUNDEN: If it is necessary to be heard, I would like to respond to that.

THE COURT: The key word in my ruling last night was the fact that they said "reread again." Under the circumstances I believe that taken in context it means to reread the testimony of Harry Pannirello.

All right. Bring in the jury.

(Jury present.)

THE COURT: Good morning, ladies and gentlemen.

I just received a note which I have marked as Court's Exhibit 111 for identification:

"Your Honor, we are now ready to hear our request on William Alonzo.

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"Thanks."

Mr. Reporter, would you be good enough to read the testimony.

(Record read.)

THE COURT: All right, ladies and gentlemen. Mr. Marshal.

(The jury left the courtroom.)

THE COURT: Today's prohibited restaurant is Doyle's. I don't even know where it is, I don't know anything about it, so don't ask me.

(At 12:05 p.m. a note was received from the jury.)

(In open court.)

THE COURT: Mark this a court's exhibit, please.

(Court's Exhibit 112 was marked for identification.)

THE COURT: This is another note from the jury:

"Dear Judge Duffy: We would like to hear Jimmy Provitera's testimony regarding his visits to Hattie Ware's apartment when William Alonzo was present.

"Could you have the above prepared to be read after lunch?

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"Thankyou, Lucy Hare, Forelady."

I told counsel involved in this about this
a couple of minutes ago, but I thought you other
gentlemen might like to go to lunch a little early.
We are not going to read it until after lunch. That
is what they want.

The only counsel that have to stay around
now are those who are involved in this testimony.
Everybody else, be back here at 2 o'clock.

(Luncheon recess.)

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2 AFTERNOON SESSION

3 (1:50 p.m.)

4 (In the robing room.)

5 THE COURT: Counsel have agreed to the
6 following pages being read in response to Court's Exhibit
7 112:

8 2969, line 4, to 2971, line 16; 2972, line
9 2, to 2973, line 17; 3228, line 21, to 3229, line 16;
10 3229, line 24, to 3230, line 19.

11 Mr.Sunden has requested also that 3231, line
12 22, be read through page 3240, line 11. The govern-
13 ment objects as to 3233, line 23 to 3235, line 2.

14 Mr. Sunden, I will hear you on that.

15 MR. SUNDEN: I would just say that I
16 concede that this may well come in the area of a more
17 general credibility determination, but since Alonzo
18 seems to be hanging on by his nails I would ask the court
19 in its discretion to let it in.

20 THE COURT: No, I don't believe it belongs
21 on. It will not be read.

22 The next exception refers to line 18 on page
23 3235 up to line 2 on page 3236.

24 MR. SUNDEN. Again I feel this is not exactly
25 the heart of the defense, but I feel it shows perhaps

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2 some inconsistency on the part of Provitera, and in
3 your Honor's discretion I would ask that you allow that
4 in.

5 THE COURT: Mr. Leighton, this is a part
6 that you object to.

7 MR. LEIGHTON: Yes, your Honor. I ob-
8 ject to line 18 on page 3235 going down to line 8 on
9 page 3236. The basis for my objection is that these
10 lines do mention my client, who is named in the indict-
11 ment as Allen, also known as Warren Robinson. I think
12 the questions asked, the way they are read back to the
13 jury, could prejudice Warren Robinson.

14 I would ask your Honor either to redact
15 it and just say identify another party or, in the alterna-
16 tive, substitute Warren Robinson's name for the name
17 Allen.

18 MR. SUNDEN: I would agree to that.

19 MR. ENGEL: The government's position is
20 that it should pick up on line 3 on 3236, and if there
21 you use the name Warren Robinson the government has no
22 objection. But we do object to the bottom of 3235
23 as not being responsive.

24 THE COURT: All right. 3235, line 18,
25 through 3236, line 2 is out.

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2 Now we have a problem with the next question.

3 MR. LEIGHTON: I object. I would rather
4 have the whole thing stricken.

5 THE COURT: I understand. The govern-
6 ment is consenting to change the name Allen to Warren
7 Robinson.

8 MR. PHILLIPS: No, we would rather have
9 the whole thing stricken.

10 MR. SUNDEN: Is that a change in position.

11 THE COURT: You just said --

12 MR. PHILLIPS: Engel said that. He was
13 overruled.

14 THE COURT: That is going to stay in. The
15 question is whether it is going to stay in as Allen or
16 Warren Robinson.

17 MR. PHILLIPS: We feel it should stay in
18 as Allen, your Honor.

19 MR. LEIGHTON: I would rather have the
20 whole thing out. If it has to be in, your Honor, I
21 would ask that your Honor change the name from Allen
22 to another person or to Warren Robinson.

23 MR. ENGEL: Your Honor, I think the tes-
24 mony is the testimony. I think we might as well
25 leave it.

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2 THE COURT: If we have not put it into
3 the record, we should indicate that page 3235, lines
4 4 through 17, is to be read.

5 We are starting now with 3236, line 3.
6 That will go to 3237, line 21.

7 Pick up at 3239, line 4.

8 MR. SUNDEN: Maybe I misunderstood, but
9 I don't understand what part has been excluded.

10 THE COURT: The redundancy in the middle.

11 MR. SUNDEN: What lines are those that
12 your Honor has ruled are out here?

13 THE COURT: Are out?

14 MR. SUNDEN: Yes. I am sorry.

15 THE COURT: 3237, line 22 through 3239,
16 lien 4.

17 MR. SUNDEN: Those are out?

18 THE COURT: Those are out.

19 MR. SUNDEN: Judge, I wonder if I could
20 be heard on that.

21 THE COURT: Sure.

22 MR. SUNDEN: Very briefly, I submit, this,
23 that on the other little disagreements we had I conceded
24 that they may have fallen into the area of general
25 credibility, and I understand your Honor set the rule

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2 on this, on general credibility things are not allowed
3 in, but perhaps specific issues as to direct case con-
4 tentions should be allowed in.

5 I submit, bearing in mind your Honor's
6 marshaling of the facts in this case, you stated that
7 a lot of the defendants are relying on inconsistencies,
8 prior inconsistent statements, etc., credibility of the
9 government witnesses.

10 Now, my man did not take the stand. What
11 I submit is a prior inconsistent statement that Provitera
12 made is, frankly, the heart and essence and the only
13 defense that my man has here, and I submit that reading --

14 THE COURT: Mr. Sunden, read it, will
15 you, please.

16 MR. SUNDEN: Certainly.

17 THE COURT: The last question asked is:

18 "Q Did you take a similar oath prior to
19 testifying before the grand jury in October of 1973?"

20 MR. SUNDEN: Right.

21 THE COURT: Then you go through a lot of
22 stuff building up to your prior inconsistent statement,
23 which appears basically on page 3239:

24 "Q And do you now recall being asked the
25 question, 'Did you deliver narcotics to anybody in the

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2 Bronx!?

3 "Were you asked that question?

4 "A Yes."

5 Continuing on you get down to your in-
6 consistent statement. All the stuff that goes in
7 between there is merely a buildup.

8 MR. SUNDEN: I see what your Honor is say-
9 ing, but if your Honor is inclined to do that I would
10 submit that where you say, "Did you take a similar a
11 oath prior to testifying before the grand jury" -- that
12 is line 19 and 20 on 3237 -- that you should include
13 really line 4 and 5 on 3238, because where your Honor
14 suggests to pick up you are excluding the question where
15 I asked specifically, "And were you asked this question
16 before the grand jury?"

17 Where your Honor is suggesting picking it
18 up it might be completely clear to the jury that that
19 is the question that I am referring to. That, of
20 course, is the heart of the whole thing.

21 Furthermore, Judge, honestly, in fairness, I
22 suggest that on 3238, line 21 and 22, that that question --
23 and 23 -- that that question and answer, even the next
24 question, should be allowed in, because I really feel
25 that that goes to the heart of the defense here, that he

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2 took a similar oath there, he took a similar oath here.

3 That is the basis on which I made my summa-
4 tion and that is the inconsistency. I feel it heightens
5 it. Really to deprive me of that does take away
6 really from the only type of defense that my client
7 has offered here.

8 THE COURT: Counselor, what I was trying
9 to do was to save you from being buried in a bunch of
10 verbiage. You want it in, you got it.

11 MR. ENGEL: Your Honor, can I be heard
12 on that?

13 THE COURT: Sure. Go ahead.

14 MR. ENGEL: First of all, without conceding
15 it is an inconsistent statement in any fashion, I think
16 that if you want to pick it up and get the essence of
17 the grand jury testimony you could do it by going to
18 3239, line 20, or even line 17, where he asks the very
19 simple question, "Was Butch Ware named as one of the people
20 to whom he delivered narcotics?" and he said no, he
21 didn't, and he didn't say he delivered to him on the
22 stand in this trial either.

23 MR. SUNDEN: Judge, I would say particularly
24 line 3238, line 24 and 25, that question, was he asked
25 to tell the whole truth, I devoted a couple of minutes

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2 of my summation to that distinction between whether he
3 just answered a question, did you deliver to anybody or
4 name all the people you delivered to," and I argued that
5 he did not tell the whole truth here and that that shows
6 the fact that this man may have been lying. I would
7 ask the court in its discretion frankly not to deprive --

8 MR. ENGEL: We are not arguing about summa-
9 tions here.

10 THE COURT: No, it is not a question
11 of summation right now.

12 I am telling you, Mr. Sunden, I will give
13 it to you, but what I was trying to do was winnow out
14 the excess verbiage in there. What you are going
15 to end up with is a lot of talk and not --

16 MR. SUNDEN: I will take that chance.

17 THE COURT: I understand. It is your
18 chance to take. I am not going to stop you.

19 MR. ENGEL: Your Honor, how do we stand
20 on page 3238 then? Does the whole load go in?

21 THE COURT: The whole load is in.

22 The last reading will be from page 3236,
23 line 3, all the way through 3240, line 9.

24 MR. SUNDEN: Could I be heard on that
25 last question, Judge?

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2 THE COURT: Yes.

3 MR. SUNDEN: Very briefly, I would submit
4 that that also should be allowed in by your Honor on the
5 ground that one of the points of this whole defense in
6 considering the general area of inconsistency is that
7 a person such as Provitera is much more perhaps likely
8 to lie if his word can't be contradicted by anybody.
9 I am just trying to heighten the effect of the fact
10 that there was only the one human being there, and that
11 asks the question point blank. I really submit
12 that it is the essence of my defense here.

13 THE COURT: No. My ruling stays,
14 3240, line 9.

15 MR. SUNDEN: Respectfully except, Judge.

16 (In open court.)

17 (Court's Exhibit 113 was marked for iden-
18 tification.)

19 THE COURT: "Dear Judge Duffy: We are
20 ready to hear the previously requested material on
21 William Alonzo.

22 "Sincerely, Lucy Hare."

23 Bring back the jury.

24 (Jury present.)

25 THE COURT: Ladies and gentlemen, I received

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2 your note, which I marked as Court Exhibit 113:

3 "We are ready to hear the previously re-
4 quested material on William Alonzo."

5 I believe that this refers to the testi-
6 mony of Provitera.

7 Mr. Reporter, would you be good enough to
8 read it, please.

9 (Record read.)

10 THE COURT: All right, ladies and gentle-
11 men.

12 Marshal, take the jury out, please.

13 (The jury left the courtroom.)

14 THE COURT: All right, don't go too far
15 away.

16 (At 3:30 p.m., a note was received from the
17 jury.)

18 (In open court.)

19 THE COURT: I have received another note.
20 Before I read it let me remind you that I indicated --
21 this will be Court's Exhibit 114 for identification --
22 let me remind you that I suggested at least three or
23 four times that I would take a partial verdict. You
24 asked me not to. You asked me to think about it.

25 I thought about it. I feel that this note

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2 however, leaves me with little choice.

3 "Judge Duffy: Please be advised that
4 after exhaustive debate and conscientious effort we
5 have reached a verdict all issues except one defendant
6 and his two counts. We await your instructions.

7 "Sincerely, Lucy Hare."

8 It is my intention at this point to take
9 the verdict. As to the one person, one defendant, I am
10 going to send them back to see if they can reach a
11 verdict on him.

12 I note that they state that it has been
13 exhaustive debate and conscientious effort. I am not
14 going to keep them very long after I send them back.

15 In this connection what I intend to do is
16 to go to the jury room. I do not intend to do anything
17 except ask who the one defendant might be. In
18 taking the verdict his name will not be mentioned.

19 MR. FISHER: Your Honor, I object for
20 the reasons stated previously.

21 THE COURT: All right. While I am gone,
22 Mr. Clerk, call the role, be sure everybody is here.

23 (Court's Exhibit 114 was marked for
24 identification.)

25 (Pause.)

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2 THE COURT: Mr. Clerk, bring in the jury.

3 The record should reflect a poll of the jury
4 as to their being present. Would you read the names
5 of the 12 jurors, please.

6 (Jury roll called; all present.)

7 THE CLERK: Madam Forelady, have you agreed
8 upon a verdict?

9 THEFORELADY: We have.

10 THE COURT: I understand, Madam Forelady,
11 that this verdict applies to all except one defendant.

12 THE FORELADY: Yes.

13 THE COURT: All right. Mr. Clerk, go
14 ahead.

15 THE CLERK: Madam Forelady, on count
16 1, how do you find the defendant Carmine Tramunti?

17 THE FORELADY: Guilty.

18 THE CLERK: Did the defendant Tramunti
19 join before May 1, 1971 or after May 1, 1971?

20 THE FORELADY: After.

21 THE CLERK: On count 1, how do you find
22 the defendant Louis Inglese?

23 THE FORELADY: Guilty.

24 THE CLERK: Did defendant Louis Inglese
25 join before May 1, 1971 or after May 1, 1971?

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2 THE FORELADY: Before and after.

3 THE CLERK: As to count 1, how do you find
4 the defendant Donato Christiano?

5 THE FORELADY: Guilty.

6 THE CLERK: Did defendant Christiano join
7 before May 1, 1971 or after May 1, 1971?

8 THE WITNESS: Before and after.

9 THE CLERK: On count 1, as to defendant
10 Angelo Mamone, how do you find the defendant?

11 THE FORELADY: Guilty.

12 THE CLERK: Did Defendant Mamone join be-
13 fore May 1, 1971 or after May 1, 1971?

14 THE FORELADY: Before and after.

15 THE CLERK: On count 1, how do you find
16 the defendant Joseph DiNapoli?

17 THE FORELADY: Guilty.

18 THE CLERK: Did defendant DiNapoli join
19 before May 1, 1971 or after May 1, 1971?

20 THE FORELADY: After.

21 THE CLERK: On count 1, how do you find
22 the defendant Frank Pugliese?

23 THE FORELADY: Guilty.

24 THE CLERK: Did defendant Pugliese join
25 before May 1, 1971 or after May 1, 1971?

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2 THE FORELADY: Before and after.

3 THE CLERK: As to count 1, how do you find
4 the defendant Joseph Ceriale?

5 THE FORELADY: Guilty.

6 THE CLERK: Did defendant Ceriale join before
7 May 1, 1971 or after May 1, 1971?

8 THE FORELADY: After.

9 THE CLERK: On count 1, how do you find
10 the defendant John Gamba?

11 THE FORELADY: Guilty.

12 THE CLERK: Did defendant Gamba join before
13 May 1, 1971 or after May 1, 1971?

14 THE FORELADY: After.

15 THE CLERK: On count 1, how do you find
16 the defendant Vincent D'Amico?

17 THE FORELADY: Guilty.

18 THE CLERK: Did defendant D'Amico join be-
19 fore May 1, 1971 or after May 1, 1971?

20 THE FORELADY: After.

21 THE CLERK: On count 1, how do you find
22 the defendant Frank Russo?

23 THE FORELADY: Guilty.

24 THE CLERK: Did defendant Russo join before
25 May 1, 1971 or after May 1, 1971?

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2 THE FORELADY: After.

3 THE CLERK: On count 1, how do you find
4 the defendant Warren C. Robinson?

5 THE FORELADY: Guilty.

6 THE CLERK: Did defendant Robinson join
7 before May 1, 1971 or after May 1, 1971?

8 THE FORELADY: After.

9 THE CLERK: On count 1, how do you find
10 the defendant William Alonzo?

11 THE FORELADY: Guilty.

12 THE CLERK: Did defendant Alonzo join
13 before May 1, 1971 or after May 1, 1971?

14 THE FORELADY: After.

15 THE CLERK: On count 1, how do you find
16 the defendant Hattie Ware?

17 THE FORELADY: Guilty.

18 THE CLERK: Did defendant Ware join before
19 May 1, 1971 or after May 1, 1971?

20 THE FORELADY: After.

21 THE CLERK: On count 1, how do you find
22 the defendant John Springer?

23 THE FORELADY: Guilty.

24 THE CLERK: Did defendant Springer join
25 before May 1, 1971 or after May 1, 1971?

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THE FORELADY: After.

THE CLERK: On count 1, how do you find the defendant Henry Salley?

THE FORELADY: Guilty.

THE CLERK: Did defendant Salley join before May 1, 1971 or after May 1, 1971?

THE FORELADY: After.

THE CLERK: As to count 3, how do you find the defendant Louis Inglese?

THE FORELADY: Guilty.

THE CLERK: As to count 4, how do you find the defendant Louis Inglese?

THE FORELADY: Guilty.

THE CLERK: As to count 5, how do you find the defendant Louis Inglese?

THE FORELADY: Guilty.

THE CLERK: As to count 6, how do you find the defendant Louis Inglese?

THE FORELADY: Guilty.

THE CLERK: As to count 8, how do you find the defendant Louis Inglese?

THE FORELADY: Guilty.

THE CLERK: As to count 11, how do you find the defendant Louis Inglese?

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2 THE FORELADY: Guilty.

3 THE CLERK: As to count 11, how do you
4 find the defendant Donato Christiano?

5 THE FORELADY: Guilty.

6 THE CLERK: As to couns 12, how do you
7 find the defendant Louis Inglese?

8 THE FORELADY: Guilty.

9 THE CLERK: As to count 12, how do you
10 find the defendant Donato Christiano?

11 THE FORELADY: Guilty.

12 THE CLERK: As to count 13, how do you
13 find the defendant Louis Inglese?

14 THE FORELADY: Guilty.

15 THE CLERK: As to count 13, how do you
16 find the defendant Donato Christiano?

17 THE FORELADY: Guilty.

18 THE CLERK: As to count 14, how do you find
19 the defendant Louis Inglese?

20 THE FORELADY: Guilty.

21 THE CLERK: As to count 16, how do you find
22 the defendant Frank Pugliese?

23 THE FORELADY: Guilty.

24 THE CLERK: As to count 16, how do you
25 find the defendant Frank Russo?

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2 THE FORELADY: Guilty.

3 THE CLERK: As to count 18, how do you
4 find the defendant Frank Pugliese?

5 THE FORELADY: Guilty.

6 THE CLERK: As to count 19k how do you
7 find as to defendant John Springer?

8 THE FORELADY: Guilty.

9 THE CLERK: As to count 20, how do you
10 find the defendant Frank Pugliese?

11 THE FORELADY: Guilty.

12 THE CLERK: As to count 21, how do you find
13 the defendant Joseph DiNapoli?

14 THE FORELADY: Guilty.

15 THE CLERK: As to count 23, how do you
16 find the defendant Louis Inglese?

17 THE FORELADY: Guilty.

18 THE CLERK: As to count 23, how do you
19 find the defendant Joseph Ceriale?

20 THE FORELADY: Guilty.

21 THE CLERK: As to count 24, how do you
22 find the defendant Louis Inglese?

23 THE FORELADY: Guilty.

24 THE CLERK: As to count 24, how do you find
25 the defendant Joseph Ceriale?

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THE FORELADY: Guilty.

THE CLERK: As to count 25, how do you find the defendant Vincent D'Amico?

THE FORELADY: Guilty.

THE CLERK: As to count 28, how do you find the defendant Louis Inglese?

THE FORELADY: Guilty.

MR. SIEGAL: May we have the jury polled as to Tramunti?

MR. ROSNER: As to all the defendants, if your Honor please.

THE COURT: As to all the defendants.

THE CLERK: Members of the jury, you have heard your verdict as it stands recorded.

(Each juror, upon being asked, "Is that your verdict?" answered in the affirmative.)

THE COURT: At this time, ladies and gentlemen of the jury, I would appreciate it if you would return to the jury room, continue your deliberations as to the other defendant. If you do reach a verdict let me know. If you feel that you can't let me know that also.

Mr. Marshal, will you escort the jury out.

(The jury left the courtroom.)

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2 THE COURT: Would those people who are
3 just members of the public please be seated right
4 now and stay seated.

5 The alternate jurors who are in the back of
6 the room, I would appreciate it if you would return to
7 the room where you were.

8 MRS. ROSNER: Judge Duffy, I had no knowl-
9 edge until you just mentioned it that the alternate
10 jurors had been brought into the courtroom. I
11 strenuously object to their having witnessed this. I
12 understand they have been held in abeyance to possibly
13 deliberate on an open count and I think it is highly
14 improper for them to have been here.

15 MR. CURRAN: Your Honor, might we have a
16 date for sentencing?

17 THE COURT: The sentencing will occur on April
18 17th, starting at 10 o'clock.

19 MR. DOWD: Your Honor, I will be out of the
20 country at that time, from the 8th to the 18th. That
21 is Easter week, your Honor.

22 THE COURT: All right. We will set the
23 sentencing down for the 22nd of April.

24 MR. DOWD: Thank you very much.

25 MR. CURRAN: At 10 a.m., your Honor.

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2 MR. DOWD: Thank you very much.

3 MR. CURRAN: At 10 a.m., your Honor.

4 THE COURT: Ten a.m., yes.

5 MR. SIEGAL: May we reserve all motions
6 until that date or some prior date fixed by your Honor.

7 THE COURT: Yes. Let's not make it that
8 long though.

9 MR. CURRAN: Your Honor, the government's
10 application would be that if there are written motions
11 to be made they be made or at least served on the govern-
12 ment at least 10 days prior to the date of sentence,
13 so that we would have an opportunity to respond.

14 THE COURT: I am not going to be deciding
15 motions on the date of sentence. That is my problem.

16 MR. CURRAN: Then we would like to receive
17 them earlier, sir, at least 10 days before the hearing date

18 THE COURT: All right. I will set a
19 hearing date for April -- I was about to say April 8th,
20 but I think that might conflict with some attorneys here.
21 That is the second day of Passover. How about April
22 5th at 10 o'clock? That gives you almost four weeks.

23 MR. PANZER: Does your Honor know what
24 courtroom you will be in?

25 THE COURT: No. I don't even know what

1 jha26

2 courtroom I will be in tomorrow.

3 I believe that the motions should be served
4 upon the United States Attorney by the 1st. That
5 sounds very unreasonable. I am not being unreasonable,
6 because I tell you right now I am going to reserve on prac-
7 tically every motion. I want to go through this with
8 your arguments fresh in my mind, and if the government
9 does not have enough time between the 1st and the 5th
10 I will take the papers a little bit afterwards. But
11 I want the arguments on the 5th.

12 MR. CURRAN: Thank you, your Honor.

13 Your Honor, at this time the government would
14 move that the defendants, with the exception, of
15 course, of the defendant Tolopka, be remanded to the
16 custody of the United States marshal.

17 THE COURT: No. I am not going to decide
18 en masse about remanding the defendants.

19 Those defendants who are in custody needless
20 to say will remain in custody.

21 MR. SIEGAL: If your Honor please, with
22 respect to Tramunti, may we have the writ discharged
23 so he can go back to Auburn.

24 THE COURT: If somebody will give it to me,
25 sure. All I need to do is to get the writ and I will

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2 sign it.

3 MR.CURRAN: Your Honor, might that be put
4 off at least until the time of sentence?

5 THE COURT: There are all kinds of prob-
6 lems, which I will take up at some other time, about
7 that. Right now, however, I think it would be appro-
8 priate for those defendants presently in prison --
9 would the marshal take them out.

10 DEFENDANT INGLESE: Can I have bail pending
11 sentence?

12 THE COURT: No.

13 As to the defendant conato Christiano, will
14 you give me something about his background?

15 MR. FISHER: If your Honor please, the de-
16 fendant is married, has been married for nine years, is
17 the father of three children, ages 8, 7 and 3. He pre-
18 sently lives at 1740 Mulford Avenue, where he resided for
19 the last nine months. Prior to that he lived at
20 280 Longstreet Avenue for six years. He has two con-
21 victions, if your Honor please, both stemming out of the
22 same incident, one state, one federal. He served a
23 period of five years imprisonment. That was the
24 sentence in the state. The federal was also five years.
25 Two and a half ran concurrently with the state. As

1 jha28

2 far as I know, that is his entire criminal record.

3 If your Honor please, the defendant has been
4 at large on bail secured by \$2500 in cash and deeds to
5 the homes of his sister-in-law -- sister. Admittedly,
6 your Honor, I think, notwithstanding my present verbal
7 statements, this did not come as a shock to Mr. Christiano.
8 I think he expected this verdict. He is here now and
9 he has been here each and every day he was supposed to.
10 That is about the most eloquent thing that can be
11 said. Certainly there isn't the slightest suspicion
12 in this particular instance. He loves his family,
13 he loves his wife, he loves his kids. No power on earth,
14 your Honor, is going to make him leave them, and
15 there is just too great a weight to run with.

16 I respectfully submit that the evidence
17 shows at most a peripheral involvement on the part
18 of Tinnegan. I submit, your Honor, the threat to society
19 is nil, the chance of fugitivity is nil. I think under
20 the standards of 3148, Title 18, United States Code, the
21 defendant should be, I ask, continued on the same bail,
22 your Honor. He can't make more.

23 I would just like to say that with the homes
24 of the family up here securing his presence, I think that
25 means a whole lot more than any amount of money. The

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2 moral responsibility to a sister and her husband and her
3 kids that would be felt by Finnegan if their home were
4 seized is awesome. I don't think even that compares
5 with the moral responsibility to his wife, who is here
6 now with the kids.

7 MR. CURRAN: Your Honor, this defendant, in
8 addition to the convictions for narcotics which Mr. Fisher
9 mentioned, has a number of arrests for bookmaking and
10 policy. I would point out, your Honor, that when he
11 was arrested in this case and interviewed he said that he
12 was unemployed and that he worked as a laborer, but he
13 did not remember for whom, and that had been a couple of
14 months ago. We asked about his income or his wages,
15 he said he didn't remember what they were.

16 We have no record, your Honor, of this
17 defendant being gainfully employed, and I submit, your
18 Honor, that now that a verdict has come in finding him
19 guilty of very substantial narcotics violations, and with
20 bail, certainly at least until sentence, no more a matter
21 of right, the defendant, who apparently has no gainful
22 employment, should be remanded, particularly in light of
23 his prior record.

24 MR. FISHER: With regard to the answer about
25 work, I instructed the defendant thereafter to fail to

1 jha30

2 respond fully to that question because of the nature of
3 this case. His manner of employment is by now no mystery
4 to the court. I don't think there is any mystery about
5 it.

6 I should also add, your Honor, that the de-
7 fendant reported three times a week to the United States
8 Attorney's Office throughout the pendency of his prosecu-
9 tion and would of course continue to do so.

10 THE COURT: He reported three times a
11 week to the United States Attorney's Office?

12 MR. FISHER: Yes, your Honor, signing
13 in.

14 THE COURT: I never heard of such a pro-
15 cedure.

16 The defendant Donato Christiano will be re-
17 manded.

18 DEFENDANT CHRISTIANO: Your Honor, may I
19 at least talk to my wife?

20 THE COURT: Yes. Not here. The marshals
21 will arrange to have it done.

22 DEFENDANT CHRISTIANO: Let's have an investi-
23 gation on the SIU, you phony bastards. You know they
24 framed me. You know yourself they framed me. Let's
25 have an investigation on the SIU. You know they framed

1 jha31

2 me, you phony bastards.

3 THE COURT: Angelo Mamone. Mr. Ellis, you
4 go first.

5 MR. ELLIS: Your Honor, the defendant Mamone
6 is 33 years, married. He has two children, five and
7 two years old. He resides at 1289 Hobart Avenue,
8 the Bronx.

9 At the time this indictment came down Mr. Mamone
10 was residing in Fort Lauderdale, Florida. He was not
11 arrested. He voluntarily appeared before this court.

12 Judge, he has been in that corridor a quarter
13 of 9 every morning to make sure that he would be here at
14 the opening of course. He has faithfully lived up to
15 his obligations to attend at every session. I remind
16 your Honor that on one occasion during the course of
17 the trial I asked for permission for Mr. Mamone to re-
18 turn to Florida. Your Honor granted that. Because
19 of some airline difficulties Mamone did not take advantage
20 of that. He was here. He did not ask to leave at
21 any other time. If he had any predeliction to leave,
22 become a fugitive, I submit that he most certainly
23 would have renewed that application and taken advantage
24 of the opportunity to leave.

25 I would like to add, Judge, that when I

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2 interviewed Mamone for the first time he maintained his
3 innocence, but he was most pessimistic about the outcome
4 of this case because of the nature of the prosecution.
5 He said nevertheless he would be here and he has been
6 here.

7 THE COURT: What is his present bail?

8 MR. ELLIS: \$10,000.

9 THE COURT: Does he have a criminal record?

10 MR. ELLIS: He has two convictions when he
11 was 17 years old, narcotics, federal and state conviction.
12 He is 33 years old now and as far as I know he has no record
13 since.

14 THE COURT: All right. Mr. Curran.

15 MR. CURRAN: Your Honor, according to the
16 government's information, this defendant does have two
17 prior narcotics convictions. I think your Honor is
18 aware of those.

19 MR. ELLIS: One was a youthful offender,
20 your Honor.

21 THE COURT: As I recall, isn't that the one
22 that I said could not come in.

23 MR. CURRAN: Not because it was a youthful
24 offender, your Honor, but because of the time span that
25 was involved. I think it was 1958.

jha33

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2 This defendant, your Honor, apparently has
3 very substantial cash resources with no apparent
4 legitimate income. At the time of his arrest he said
5 that he was self-employed as a gambler and that his
6 annual income was in the vicinity of \$50,000.

7 Your Honor, because of his very substantial
8 income, and the fact that the jury has now found him guilty
9 of extremely serious charges, the government moves for
10 his remand.

11 MR. ELLIS: Your Honor, I would most respect-
12 fully submit that the determining factor in your decision
13 should be the likelihood of Mamone's return to court,
14 and there is absolutely nothing in this man's background
15 that should lead your Honor to believe that he won't
16 be here. He is just too good and devoted a family man
17 to ever leave, Judge. That's not going to happen.

18 THE COURT: All right. The defendant
19 Mamone will remain on bail.

20 Mr. Pugliese.

21 MR. ROSENBERG: If your Honor please, the
22 singular issue is whether or not the defendant will
23 appear at the time of sentence, Judge, and consistent
24 with previous counsel's application, this defendant has
25 always been here 9 o'clock in the morning, even before all

1 jha34

2 counsel got here. We are not idiots. We saw the
3 evidence coming in. It was overwhelming. Although
4 the defendant has a constitutional right to go to trial
5 and remain silent and put the government to its proof,
6 which in effect is what the defendant here has done,
7 nevertheless, we were realistic.

8 I respectfully submit, your Honor, the time
9 the defendant got out of jail he went to work the next
10 day and he continued to work up until the time he had to
11 go to trial. He has his uncle's house up. He
12 doesn't have any money, and this I can attest to myself.
13 So he is not running any place, Judge. All I ask is
14 that he be continued on bail so that he can go back to
15 work and provide for his family. That's all he is
16 interested in, going back to work and providing for his
17 family, until such time as he has to be sentenced,
18 your Honor.

19 THE COURT: Mr. Currar, what is his present
20 bail?

21 MR. CURRAN: \$25,000, your Honor.

22 THE COURT: All right.

23 MR. CURRAN: As your Honor will recall, this
24 defendant was arrested I believe in 1970 and did not
25 plead until '71 in the state court, surrendered October

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2 22, 1971, as I recall. That arrest involved posses-
3 sion of 11 ounces of heroin. Your Honor heard the
4 testimony about his involvement in this particular case.

5 In addition, I understand that particular
6 heroin was 70 per cent pure, that is 7-0, your Honor.
7 There is an 849 information filed as to this defendant,
8 I believe. I think in addition your Honor should
9 consider as to this defendant the record in this case
10 with respect to Paulie the Arrow, this defendant's own
11 activity in the courtroom right in front of your Honor,
12 where he certainly indicated, to put it mildly, a
13 rather violent nature. In the light of his previous
14 criminal record, your Honor, the proof in this case,
15 and the fact that he does face, particularly with a Sec-
16 tion 849 information, very substantial time, the govern-
17 ment urges your Honor to remand him.

18 MR. ROSENBERG: If your Honor please, I
19 would just reiterate, the singular issue is as to whether
20 or not the defendant is going to show up. What Mr.
21 Curran has alluded to, that was a similar circumstance
22 involving also with respect to this case which he did
23 time on. There is no doubt that the defendant has
24 been convicted of narcotics, but I say that is still not
25 the issue for this court. As far as I am concerned,

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2 and I urge this court on my sincerest belief, this de-
3 fendant will be here for sentence, your Honor, and that
4 is the only thing this court has to concern itself with.
5 All he is asking for is an opportunity to go to work.
6 If he doesn't work he has no feeling or no reason to be
7 out on the street. He just wants to go to work to
8 provide for his family, nothing more, your Honor.

9 MR. CURRAN: Your Honor, just very briefly,
10 the record is clear that this defendant's associates,
11 his brother and Dilacio, are both fugitives. I think
12 the record shows that this defendant is a danger to the
13 community.

14 THE COURT: The defendant Pugliese will be
15 remanded.

16 MR. ROSENBERG: If your Honor please, one
17 other application. He has a confirmation coming up for
18 his daughter for March 22nd. His daughter has waited
19 for him to come out of jail the last time and there was
20 a postponement until that date. At least will your
21 Honor continue him on bail so he can attend that confirma-
22 tion and he can surrender the next day.

23 THE COURT: No.

24 The defendant Ceriale. Mr. Warner.

25 MR. WARNER: Your Honor, the defendant has

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2 been a family man and a working man for practically his
3 entire adult life. He is married now for over 20 years.
4 His wife is also working. He has a daughter who is
5 attending college, whose name is Lydia, and is 19 years
6 old. He has been a resident of New York for his entire
7 life. He is 46 years old. He has no prior criminal
8 record at all. He has no prior arrest, as a matter
9 of fact, except for one arrest in 1950.

10 THE COURT: For what?

11 MR. WARNER: Which was dismissed.

12 THE COURT: What was it for?

13 MR. WARNER: It was a robbery case, your
14 Honor, but Mr. Cerialle informs me that it came about
15 from someone having used his car.

16 THE COURT: Hold on for a minute.

17 Mr. Ellis, don't go away. Is that Mr.
18 Mamone with you?

19 MR. ELLIS: He is going to call his wife.

20 THE COURT: Yes, but I want both of you
21 back here.

22 All right. Go ahead.

23 MR. WARNER: It was a robbery case, your
24 Honor, but Mr. Cerialle told me it was a mistaken identi-
25 fication arising out of the use of his car and apparently
it was dismissed practically the day after arraignment

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2 or practically at arraignment or something like that.

3 As I said, he has been working all his life.
4 Of course, the court only saw some of the work that he has
5 been doing in the course of this trial, Housing and
6 Development Administration, the Model Cities Program,
7 Washburn Wire Company, plasterer's union, and so on.
8 In addition, Mr. Ceriale had a taxi license, he was
9 driving a taxi, he had further spare time work, he was
10 doing construction work, and so on.

11 Your Honor, although the defendant has main-
12 tained his innocence to me, because of the nature of this
13 trial, he also was prepared for the verdict, frankly,
14 much more prepared for the verdict than I was. Never-
15 theless he has still come to court every day. He has
16 always been here early. Your Honor, I frankly
17 cannot think of any conceivable reason why he should not
18 be continued on bail.

19 THE COURT: What is his present bail?

20 MR. WARNER: \$10,000 cash surety.

21 I would like to mention one other thing.

22 THE COURT: How was it put up, in cash?

23 MR. WARNER: Yes, your Honor. It was put
24 up in cash, but from savings of a lifetime, Judge.

25 THE COURT: All right.

1 jha39

2 THE COURT: All right.

3 MR. CURRAN: Your Honor, I think Mr. Warner
4 has stated, so far as the government knows, fairly
5 accurately the defendant's background. I would point
6 out to your Honor, however, that according to the proof
7 in this case this defendant played a very significant and
8 important role in the distribution of the narcotics that
9 was involved in this case. These are serious charges.
10 He is facing substantial time and the government's
11 application is for a remand.

12 MR. WARNER: Your Honor, I would only add
13 very briefly I don't think that the role that the
14 proof indicated Mr. Cerialle played has anything to do with
15 whether he should be allowed to continue on bail.
16 There is no question about the fact that Mr. Cerialle saw
17 the proof as it came in but that he still continued to
18 come regularly and reliably.

19 Finally, I would say this to your Honor:
20 my impression of Mr. Cerialle, whom I have gotten to know
21 very, very well over the course of this trial, is that
22 the thing that is uppermost in his mind, the main concern
23 that is facing him now, is to work to whatever extent
24 he can to make whatever provisions he can for his family
25 prior to sentencing. Your Honor knows that I was

1 jha40

2 continually making applications throughout this trial
3 for Mr. Ceriale to be able to work during the latter
4 part of the day and I am sure that is what he is interested
5 in doing now most.

6 THE COURT: All right. The defendant
7 Ceriale will remain on bail.

8 MR. WARNER: Thank you, your Honor.

9 MR. CERIALE: Thank you, your Honor.

10 THE COURT: Don't leave.

11 MR. RICHMAN: Your Honor, may I be excused
12 for five minutes?

13 THE COURT: Sure, go ahead.

14 Mr. Dowd, I will hear from you in connection
15 with Mr. Russo.

16 MR. WARNER: Excuse me, your Honor.
17 Mr. Ceriale is just going to go out to speak to his wife.

18 THE COURT: Yes, but I want him back in here.

19 MR. DOWD: Your Honor, with respect to the
20 defendant Russo, prior to these incidents of which the de-
21 fendant was convicted here today the defendant never had
22 a prior record in respect to narcotics. He had a
23 policy conviction. It appears to be a misdemeanor,
24 but I am not sure. It was in 1963. In 1967 I think
25 there was a misdemeanor with respect to stolen property.

1 jha41

2 I think your Honor is aware that throughout
3 the pendency of this trial and before the defendant has
4 been here in court all day and worked from 6 to 2 for
5 Broadway Maintenance every night. Your Honor is
6 also aware that his wife gave birth to a child I think
7 two weeks ago, their first child, and in respect to
8 that even up to this time, with the exception of the time
9 the jury has been out, when he has been required to be
10 here and therefore off work, he hasn't even seen the child
11 for all practical purposes, because we have been working
12 Saturdays and Sundays. The child is to be baptized
13 Sunday. He also before this trial had to sign in
14 with the United States Attorney's Office twice a week,
15 come down here from the Bronx, which he did religiously
16 and faithfully.

17 I also will point out there is a substantial
18 amount of bail on the defendant Russo which goes back to
19 a long story involving a state court case. There is
20 \$50,000 on the defendant at this time, which is supported
21 by his mother's house, two bank accounts of \$18,000, which
22 constitute her life savings and all her property in this
23 world, and he had a substantial amount of trouble trying
24 to get the money thereafter to pay the premium on the
25 bond.

1
2 I submit, your Honor, that my client's work
3 record, the fact that he has been continually working in
4 respect to this matter, he has been faithfully here in
5 respect to this case, the fact that he has a young child
6 two weeks old at home -- quite frankly, his interests
7 are remaining here and there is no interest in him with
8 that kind of background and a history in being any
9 place other than here and facing it. I point out too
10 that I think there should be little doubt in anybody's
11 mind about the inevitability about the verdict; at
12 least in connection with the direct sale to a police
13 officer. He was here, he heard about it. Quite
14 frankly, from the time the jury went out he indicated to
15 me what the verdict might be.

16 He has a good outlook. No matter what
17 happens in this case he has something to look forward to.
18 He has a child now and he wants to do the best he can for
19 that child, for his family, which he cares about, and he
20 has indicated his care by working like he has, being here
21 all day and there all night. I think that these are
22 the best indicators of the fact that this man will be
23 here. He very much wants to spend some time in these
24 coming weeks with that new-born child, and I think it is
25 not unreasonable to leave the defendant out in light of

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2 the bail which he has on him in this case.

3 MR. PHILLIPS: Your Honor, Mr. Russo's rap
4 sheet indicates that he has several prior arrests
5 for policy, including a conviction in 1963 for policy .
6 By his own admission when he was arrested in this case
7 he said that he was convicted in 1968 of possession of
8 a weapon, grand larceny, for which he received two
9 years probation. He also said in connection with his
10 state case, which your Honor knows all about, it is not
11 a long story at all, because it was the January 10th
12 sale to Al Casella, he is out on \$100,000 bail. He
13 is facing a life sentence in connection with that because
14 under the old law in the state sale of a pound or
15 more exposes the defendant to up to life imprisonment,
16 15 years to life. That is what he is facing there.

17 He has been convicted on two counts here and
18 is facing, therefore, up to 30 years.

19 We submit, your Honor, that in view of the
20 serious charge, the fact that he is facing up to life in
21 the state court based on a direct sale to an agent,
22 where you have the detective's testimony, which was obviously
23 believed by the jury here, and corroborated by tapes, that
24 the defendant is a very bad bail risk and should be re-
25 manded.

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2 MR. DOWD: Your Honor, may I be heard just
3 a little further. In respect to the state case, that
4 bail was reduced to 25,000. I submit that if there
5 was any risk at all it was prior to this indictment,
6 when that state case was pending. You know, I have said
7 it before. One of the tactics of the defense has been,
8 quite frankly, to be tried here first and to have the proof
9 put forth in respect to the January 10th sale. Recent
10 cases in the state indicate that our state statute, the
11 New York State statute, in respect to double jeopardy
12 will probably bar a subsequent trial in the state, this
13 having been proved as part of the conspiracy. As I
14 say, the best indicator is with those charges pending,
15 and not these, prior to that, he had been in that state
16 court every time that he had to appear, each and every
17 time.

18 Another factor I want to reiterate with respect
19 to the bail is the security. It is his mother's entire
20 life, a mother he is very close to and has been close to
21 all his life. As I say, this man has no reason or
22 care to abandon the things he is trying to do for
23 especially now a very new family. As I say again,
24 it is indicated by his interest in trying to be able to
25 provide for them knowing full well what lies ahead in all

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2 probability for him in respect to a conviction in re-
3 spect to this case.

4 I would say in light of this, in light of the
5 bail, your Honor, that he has given no indication what-
6 soever that he will do anything but submit to the
7 jurisdiction of the authority of this court, and I ask
8 that he be given an opportunity, your Honor, as I say,
9 to have some time with his child, to continue working
10 to make sure that they are provided for. I think
11 this is the only way he can.

12 As I say, he has been working nightly during
13 this trial for nine weeks from 6 to 2 in the morning,
14 and before that when he worked at night coming down
15 here twice a week from the Bronx to sign in, which he did
16 faithfully.

17 I say, your Honor, there is no reason in the
18 world to believe that this defendant won't be here. I
19 point out the other aspects of the state case, which I
20 think would be probably barred at this point.

21 THE COURT: I will wait and make a decision
22 at the end of the rest.

23 Go ahead, Mr. Leighton.

24 MR. WARNER: Your Honor, before Mr. Leighton
25 may I be excused for a moment? Of course, I will be

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2 right back.

3 THE COURT: Yes. Be right back though.

4 MR. LEIGHTON: Your Honor, I believe the
5 court does know that Warren Robinson does come from
6 Washington, D.C. I personally feel that if he is
7 allowed to continue in the present bail conditions he would
8 be no bail risk whatsoever. The defendant is a married
9 man. He has three children and resides in Washington,
10 D.C. He does have two prior convictions, but they were
11 before 1966.

12 THE COURT: What were they for?

13 MR. LEIGHTON: They were for grand larceny.
14 After 1966, I believe in 1968, Warren Robinson Igues
15 tried to change his ways and was married. He is now
16 the father of three children. In 1968 he opened up
17 his own clothing store, and I believe, your Honor,
18 there is testimony in the record that even Agent Logan
19 himself went to the store on either one or several occa-
20 sions. The defendant also has a partnership in a carpet
21 company in Washington, D.C.

22 This trial has been a long trial. The
23 defendant has been here each and every day. I believe
24 he has been on time each and every day. He has been
25 away from his home for a long period of time. His

1 jha47

2 wife is here in court. She has come up on several
3 occasions.

4 When the indictment came down in this case
5 and the warrant was issued for Warren Robinson he was
6 never arrested. Agents went to his business or his home
7 left word, and warren Robinson turned himself in voluntarily.
8 He came to this jurisdiction after a removal hearing in
9 Washington, D.C. and turned himself in here voluntarily.

10 I don't see anything in his present record
11 or the past that would make Warren Robinson a threat or
12 danger to the community.

13 On this basis, your Honor, I ask the court to
14 continue Warren Robinson until the date of sentence.

15 MR. PHILLIPS: Your Honor, Mr. Robinson's
16 history I think is somewhat more extensive than Mr.
17 Leighton has stated. In 1959 he was convicted of house-
18 breaking. He was given a three-year sentence. I
19 believe that sentence was suspended, however. In 1963
20 he was arrested for grand larceny and stolen property
21 and I believe that case was dismissed. In 1963 he
22 was also arrested for breaking and entering and that case
23 was nolle prossed. In 1965 he was arrested and
24 convicted for breaking and entering and received a
25 five-year sentence. At the same time he was convicted

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2 of breaking the seal lf an interestate motor truck
3 and that case was dismissed. In 1965 he was also --

4 THE COURT: Wait a second. You say he
5 was convicted and the case was dismissed.

6 MR. PHILLIPS: I am sorry. He was
7 arrested and the case was dismissed, your Honor. In
8 1965 he was also arrested for a violation of the Dyer
9 Act, which case was also dismissed. In 1968 he was
10 arrested for storehouse breaking, convicted, and re-
11 ceived a five-year sentence. He was also arrested in
12 1972 for a bad check, later in 1972 for false pretenses,
13 and I don't know whether those cases are outstanding
14 or whether they have been dismissed. He was not
15 convicted, in any event, on them.

16 Your Honor, I am not altogether clear about
17 what occurred in Washington respecting his surrendering,
18 but I do know that the agents made extremely vigorous
19 efforts to try to locate him before he did turn himself
20 in, if he did turn himself in, and that was in November
21 of 1973. At that time he gave as his address 1224
22 Hamilton Street, N.W., and I know that he had a pre-
23 liminary hearing in Washington, after which the
24 magistrate directed that he appear in this court, and I
25 had an agent in the court, in or about the court that

1 jha49

2 your Honor was assigned to on the date that he was to
3 appear, and the agent never saw him. After he failed
4 to appear I asked your Honor for a bench warrant, which
5 your Honor issued. The agents then having the address
6 of 1224 Hamilton Street made various efforts to try to
7 locate him. I know that your Honor contacted the
8 magistrate.

9 THE COURT: No, no, no. I didn't contact
10 the magistrate. The magistrate contacted me.

11 MR. PHILLIPS: In any event, the magistrate
12 in Washington indicated that he reported to --

13 THE COURT: The magistrate on a weekly
14 basis.

15 MR. PHILLIPS: That's correct. We
16 submit, however, that based on Robinson's background,
17 based on the serious charges that he is facing here, that
18 he is also an extremely poor bail risk.

19 THE COURT: What is his present bail?

20 MR. PHILLIPS: I believe it is \$2500.
21 It may even be a personal recognizance bond. That
22 was set in Washington by the magistrate.

23 THE COURT: Is that correct?

24 MR. LEIGHTON: That is correct, your Honor.
25 I believe it is either 3000 or \$2500 personal recogniz-

1 jha50

2 ance bond.

3 MR. PHILLIPS: I would also point out the
4 proof in this case was overwhelming as to Robinson.

5 THE COURT: Yes, I know. I was here
6 for it.

7 MR. LEIGHTON: Judge, I believe the reason
8 for that, I think when Agent Logan testified in Washing-
9 ton he testified -- I had the hearing minutes -- that he
10 had Warren Robinson under observation for something like
11 20 to 30, maybe even 50 times, that he went into his store
12 on many occasions, and the magistrate asked him did
13 he ever see any narcotic traffic, any kind of narcotic
14 conduct, and he said none that he was aware of.

15 THE COURT: Those things happen.

16 MR. LEIGHTON: As for the bench warrant,
17 that was issued here in New York, I think I was respon-
18 sible for that because --

19 THE COURT: I am aware of where you were.

20 MR. LEIGHTON: But also the defendant was
21 in that courtroom the day I was on trial and I did call
22 your Honor's chambers and spoke to one of your Honor's
23 law clerks.

24 THE COURT: Yes.

25 MR. LEIGHTON: So Warren Robinson did come

jha51

to New York when he was supposed to.

MR. PHILLIPS: I would just like to add, as your Honor may have gathered from Agent Logan's testimony or the cross examination of Tennessee Dawson, Warren Robinson has been the subject of the narcotics investigation by the Bureau of Narcotics and Dangerous Drugs for a number of years and is considered by them to be one of the major narcotics dealers in Washington, D.C.

MR. LEIGHTON: Judge, if your Honor has somehesitation because of the bail that has been set, if your Honor wants a different bail or a change in the bail conditions, we would have no objection to that, if your Honor would give us at least a week to make any change that the court so desires. If the court sets a relatively small amount of cash or asks for some sort of security or a co-signature, I think that could be arranbed. But because of the logistics problem, Mr. Robinson having all his roots in Washington, D.C. and the trial being here in New York, this could not be done overnight.

Your Honor has had a chance to watch Warren Robinson in court. I think his demeanor was on the par that should be expected from any person in a court of law. I have gotten to know Warren Robinson over this

1 jha52

2 three-month period and I think and I am convinced that
3 he would come into court on his day of sentence and
4 surrender voluntarily.

5 THE COURT: The defendant Robinson will
6 be remanded, at least at this time.

7 Mr. Panzer.

8 MR. PANZER: Your Honor, I have represented
9 Hattie Ware since October 3, 1973, when I was assigned
10 to her. Her original bail was a \$5000 personal recogni-
11 zance bond supported by \$500 cash, which was put up by
12 her sister. She is 34 years old. She has no prior
13 criminal record. She is gainfully employed as a
14 secretary at the Federal Carver Bank. She has been
15 here each and every day during this trial. She hasn't
16 missed one day or any of the pretrial conferences or any
17 of the times that she was supposed to appear.

18 She has an adopted son. She is living at
19 1380 University Avenue. She has no prior criminal
20 record.

21 I have no reason to believe, your Honor,
22 that she will not be here on the day of sentence.

23 THE COURT: Mr. Phillips.

24 MR. PHILLIPS: Your Honor, it is obvious
25 that Miss Ware has been leading a Dr. Jekyll and Mr. Hyde

1 jha53

2 type of life. We submit that based on the seriousness
3 of these charges of which she has been convicted that
4 she should be remanded.

5 MR. PANZER: Your Honor, may I point out
6 the jury did not find her guilty of being in the conspiracy
7 before May 1, 1971, so she is not facing any mandatory
8 minimum.

9 THE COURT: I am aware of that. The
10 defendant Ware will be continued on the present bail
11 arrangements.

12 MR. PANZER: Thank you, your Honor.

13 THE COURT: Mr. Siegel.

14 MR. SIEGEL: Your Honor, if it may please
15 the court, in behalf of my client John Springer I would
16 ask that his bail be continued. He is presently free
17 on a \$5,000 bail -- bond, rather, secured by property
18 which belongs to his father, and also cash put up by a
19 friend of the family.

20 Your Honor, as far as the underlying back-
21 ground of the security, at the court's direction a Nebbia
22 hearing was held and Magistrate Schreiber held that the
23 collateral were not the fruits of a crime or any criminal
24 activity.

25 Furthermore, Mr. Springer is married, Mr.

1 jha54

2 Springer's sister is in court at this time. Mr.
3 Springer's wife is presently seven months pregnant. He
4 has four sons, one of which is a police cadet with the
5 New York City Police Department.

6 As far as his criminal record is concerned,
7 Mr. Springer has two prior misdemeanor convictions.
8 One is a conviction under 26505, subdivision 9, possession
9 of a weapon, for which Mr. Springer received I think a
10 conditional discharge. Further, Mr. Springer pleaded
11 guilty to an unauthorized use of a motor vehicle, also
12 a misdemeanor, for which he received a sentence of pro-
13 bation. That was some time ago, your Honor, and
14 since then, with the exception of one arrest in 1972, which
15 was dismissed at the arraignment, Mr. Springer has
16 remained free of criminal conduct.

17 Now, I am sure Mr. Phillips will bring to the
18 court's attention the contraband which was allegedly found
19 in the apartment where Mr. Springer was in December of
20 '73. However, I am in a similar situation as Mr. Dowd
21 since this contraband was introduced in this proceeding.
22 Based on a ruling in the matter of Willie Abraham, decided
23 January 31, 1974 and under the CPLR, Section 40.20, the
24 prospect of Mr. Springer going to trial in the state is
25 rather remote.

1 jha55

2 Your Honor, since my assignment in this matter
3 Mr. Springer has appeared in court on each and every
4 appearance. Based on my knowledge of Mr. Springer,
5 I can just about guarantee the court that Mr. Springer
6 will be present at the time of sentence.

7 MR. PHILLIPS: I believe Mr. Siegel's state-
8 ment as to Mr. Springer's prior criminal record is correct,
9 your Honor. However, I submit that Mr. Springer has
10 a total lack of regard for the criminal judicial process.
11 It was all that I could do to get Mr. Springer even to
12 come to the pretrial conferences that your Honor
13 scheduled, and while he was out on bail in this case, as
14 your Honor knows, he was in the process of mixing heroin
15 in his house in the presence of his family and when he
16 was caught doing that he attempted to bribe the police
17 officers that were there at that time or in fact did
18 bribe them by paying them \$1000, for which he is being
19 charged in the state court, and we would submit based on
20 the seriousness of the charges and his total lack of
21 respect for the criminal process that Mr. Springer should
22 be remanded.

23 MR. SIEGEL: Your Honor, if I can be heard
24 further, since my involvement on this case I have had
25 several conversations with Mr. Springer. Mr. Springer

1 jha56

2 has appeared in court on each and every time as required
3 by the court. I would ask that in the interests of
4 justice bail be continued, because the purpose of bail,
5 your Honor, is to assure the defendant's return to the
6 jurisdiction for sentencing and there has been no
7 showing on the part of the government that Mr. Springer
8 will in fact not return.

9 THE COURT: The defendant John Springer
10 will be remanded.

11 Mr. Pollak.

12 MR. POLLAK: With regard to the defendant
13 Henry Salley, as your Honor knows --

14 MR. SIEGEL: Excuse me, Mr. Pollak.

15 Your Honor, would it be possible for Mr.
16 Springer to have a conversation with his sister, who
17 is presently in court..

18 THE COURT: Downstairs.

19 MR. POLLAK: With regard to Henry Salley,
20 your Honor is aware of the fact that his role in this
21 thing was relatively tangential. Of course, at this
22 point, the jury having found him guilty, we must assume
23 that the facts are so, although he has denied them in court.

24 The defendant Henry Salley has a substantial
25 work record for many years and is retired as a result of

1 jha57

2 disability, had a good service record, which was brought
3 out in court. He is presently living on his dis-
4 ability pension. He has been here every day, although
5 it involved substantial hardship for himself, because I
6 knew that he was in need of medication for both a heart
7 condition and the last couple of days has been suffering
8 from gout, the result being that the medication he needed,
9 he had to have his wife come up from Washington with it
10 yesterday. Nevertheless, he has been here, been
11 living at the YMCA, and been going down to Washington on
12 the weekends.

13 I submit that there is nothing in Mr. Salley's
14 background to indicate any doubt whatsoever that he would
15 appear. He is presently free on \$5000 personal recog-
16 nizance bond unsecured by any cash and has appeared at
17 every session of the court. His prior involvement with
18 the law has been relatively minimal. There was this
19 one conviction that I didn't know about that Mr. Phillips
20 brought up with regard to the diet pills in 1973, where
21 he was fined \$100, but there has been no other arrest or
22 conviction prior to this.

23 I submit that there is no question whatsoever
24 that Mr. Salley will appear for sentencing or at such
25 other time as the court may require and I ask that he be

1 jha58

2 continued on his present bail.

3 MR. CURRAN: Your Honor, this defendant
4 has very little roots apparently even in the Washington,
5 D.C. community. At the time of his arrest I
6 think he gave an address which is different from the one
7 he used in connection with the hotel registration. He
8 said that he stays with his sister there, his sister and
9 brother-in-law. He told the assistant United
10 States Attorney on arraignment that he had no prior
11 criminal record and as your Honor knows, he does. He
12 was convicted of contempt in addiiton to the misdemeanor
13 charge that he testified about.

14 In addition, your Honor, I would submit that
15 the defendant took the witness stand and the jury found
16 that he did not testify truthfully on that occasion.

17 According to our information, he was involved
18 in the traffic of narcotics and heroin in the District of
19 Columbia. We feel now, your Honor, that the presump-
20 tion of innocence has been removed by the jury's verdict,
21 that he should be remanded.

22 THE COURT: The defendant Salley will be
23 remanded.

24 MR. DOWD: Your Honor, could I say one more
25 word on behalf of the defendant Russo.

1 jha59

2 THE COURT: We are not finished yet.

3 MR. DOWD: I am sorry.

4 THE COURT: Mr. King.

5 MR. KING: If your Honor please, as to
6 my client's community ties, he has lived in the same
7 house for the past 12 years, the house is owned by his
8 mother-in-law. It's a three-family house. He
9 lives with his wife and two children, a son of 18, a
10 daughter who is 10. I have seen both children. They
11 seem to be very well reared. I have met his wife.
12 She is a gentle creature. I know of no marital discord
13 between them that would trigger any thoughts of leaving
14 the jurisdiction just to escape a possible sentence.

15 Now, when my client was arrested he quietly
16 went with the agents. He was given the Miranda warning.
17 He refused an attorney, said he had nothing to hide, that
18 he would talk. The only thing he wouldn't do would
19 be to squeal on anybody. He was thereafter held in
20 \$50,000 bail.

21 Some 10 days later, Judge, that bail was re-
22 duced to \$15,000, and, if you will forgive my own interpre-
23 tation, I would think that the magistrate who made that
24 substantial reduction must have done so with the thought
25 that the crime with which my client was charged was one

1 jha60

2 that was not relatively serious.

3 Now, in order to secure the \$15,000 bond
4 that was given Mr. Gamba's mother-in-law turned over the
5 deed to her property and her entire life savings,
6 amounting to \$3000.

7 Now, in view of his domestic life, which has
8 been, as I say, a tranquil one, his obvious obligation to
9 his mother-in-law, it is extremely unlikely that he would
10 want for any other reason to hurt his wife through his
11 mother-in-law. On top of all of which he is a very
12 sick man. He is a very sick man and he requires con-
13 stant medical attention. This is not the type of man
14 who would be likely not to show up on a return date
15 that your Honor orders. He has been here promptly every
16 day. He has been here 9 o'clock, just as I have been.
17 I have seen him here every single day. He has never
18 missed one day at all.

19 Finally, if your Honor will indulge me, I
20 should like to read to you a very brief quote from a very
21 recent circuit case in this circuit, Judges Feinberg,
22 Mulligan and Oakes, in which the trial judge had made the
23 statement: "I never consider bail once I sentence
24 the man. I don't think this is the type of case
25 where I should set bail." That was the trial judge's

1 jha61

2 statement, to which the Circuit Court replied, "This
3 approach is wholly improper. The Bail Reform Act of
4 1966 incorporates a presumption in favor of bail even after
5 conviction."

6 I respectfully submit to your Honor that this
7 is a case deserving of a continuance of bail.

8 MR. PHILLIPS: Your Honor, Mr. Gamba's
9 prior record includes a federal narcotics conviction in
10 1959, when I believe he would have been 25 years old --
11 he is now 40 years old -- for which he received a
12 sentence of five years. As a result, we have filed
13 an information charging him as a second offender in con-
14 nection with this case. He has also been arrested for
15 violation of the New York State policy laws, once
16 in 1963, once in '64, once in '65, once in '66 and once
17 in '67. The FBI rap sheet does not reflect the
18 dispositions of those arrests.

19 When he was arrested he indicated that he
20 was unemployed, his last employment being six weeks
21 prior to his arrest. We submit there is the serious-
22 ness of these charges, the prior criminal record of the
23 defendant, and also the fact, as your Honor may re-
24 call, during the trial there were one or two outbursts
25 by Mr. Gamba. In fact, I believe your Honor held Mr.

1 jha62

2 Gamba in contempt of court and suspended a five-day
3 sentence as a result of his standing up and accusing one
4 of the witnesses of being a liar.

5 MR. KING: If your Honor please, I am not
6 going to dispute the record read by Mr. Phillips, but I
7 say this, that whatever infractions of the law he has
8 committed, he has paid his debt, and I don't see how that
9 has one whit to do with the subject we are talking about.
10 The crimes he has committed, as I say, he has paid for and
11 paid for dearly. As a matter of fact, as a direct
12 result of his imprisonment is what is causing his
13 present illness. I don't see that that should enter
14 into the picture at all.

15 I urge your Honor to pay some attention
16 to the facts I stated as to the community ties, his
17 family ties, the fact that it is almost inconceivable that
18 he would want to hurt his mother-in-law, whose entire
19 fortune has been put up to keep him out of jail. It
20 is extremely unlikely.

21 Further, for your Honor to take due notice
22 of the case I quoted from, U. S. against Field 466 F. 2d
23 119. I think the law stated there is good law and
24 I respectfully submit that your Honor should follow it.

25 THE COURT: The defendant Gamba will be

1 jha63

2 remanded.

3 Mr. Dowd, you had something you wanted to say.

4 MR. DOWD: Two things, Judge.

5 THE COURT: You are not going to say it right
6 now.

7 Those defendants who were permitted to remain
8 on bail, are they here?

9 MR. ELLIS: Yes, your Honor.

10 THE COURT: I am going to ask your attorneys
11 to go to the probation office with you. The clerk will
12 give you a form.

13 I am telling you right now that your sentence
14 will depend in great part on what is in that probation
15 report. Please cooperate with the probation
16 officer.

17 MR. FISHER: I think the office is closed
18 now, your Honor.

19 THE COURT: No, it is not. If it
20 happens to be closed now be there first thing tomorrow
21 morning.

22 As I said, cooperate with the probation
23 officer. If you don't I can't get a complete evaluation
24 of what they think, and sentence depends quite a bit on
25 that.

1 jha64

2 At this point I am going to take a few
3 minutes to think about the situation with respect to Mr.
4 Russo. At this point those attorneys who are not
5 involved in any further things can leave. I am going
6 to take five minutes to think.

7 You want to say your piece now? Go ahead,
8 say it now so I can think about it.

9 MR. DOWD: Judge, one thing I wanted to
10 note was the defendant's work record. Fifteen years e
11 he has been a member of Local 3, continuously employed.
12 In fact, it may sound strange, but he has been employed
13 since the age of six continually, never been unemployed.
14 I have seen his bank accounts, I have seen his
15 records, and I have seen the money that was put up for
16 bail. Actually, from what I see, he is on the
17 highest bail of anybody, and I can tell you how that
18 happened. I think that should be of interest to the
19 court.

20 In state court when the original arrests were
21 made bail was asked in astronomical amounts. The
22 judge that night set bail for everybody at 100,000.
23 Subsequently the problem with Mr. Russo was that his
24 mother ran down with her house, everything she owned.
25 In fact, his mother, who is a widow, is going to get mar-

ried, and the man she is going to marry put up stocks,
all his stocks, to cover that. His problem is he
made the bail.

Subsequently all the other bails were put down
to the 15,000 to 20,000 area that were originally set
at 100,000. I talked to the district attorney. They
agreed to reduce his to 25,000 because it looked so ludi-
crous compared to the other bails. The day before we
were going to do that he was arrested in this case for
exactly the same thing he is held in the state there.
There we have the 100,000 sitting there, my God, this is
a big guy, when in fact it is only because Legal Aid that
night failed to make an effective argument when the bails
were originally set. They were all subsequently reduced.
That may give you the idea. I point out those two
cases which indicate that the other case will probably
in all likelihood be barred.

THE COURT: All right.

MR. FISHER: Your Honor --

THE COURT: Do you want to reply to Mr.
Dowd?

MR. CURRAN: No, we have nothing further
to say about that defendant, your Honor.

MR. FISHER: Would you consider, your Honor,

1 jha66

2 hearing me with regard to an application to reconsider
3 your remand order as to Christiano Friday morning?

4 THE COURT: Friday morning?

5 MR. FISHER: Yes.

6 THE COURT: Tell you what. Call my
7 chambers tomorrow morning and I will give you the time
8 and place.

9 Those of you who have no further interest,
10 why don't you leave.

11 MR. DOWD: Your Honor, could I see you with
12 Mr. Curran off the record, sir?

13 THE COURT: Sure.

14 (Recess.)

15 THE COURT: I have another note.

16 (Court's Exhibit 115 marked for identifi-
17 cation.)

18 THE COURT: I received a note from the jury
19 which reads:

20 "Judge Duffy: Please be advised that we,
21 the jury, are hopelessly deadlocked on the issues regarding
22 counts 1 and 7 pertaining to the defendant B. Tolopka.

23 "Sincerely, Lucy Hare, Forelady."

24 MR. FISHER: Your Honor, I am covering
25 for Mr. Richman.

1 jha67

2 THE COURT: You are not going to make a
3 motion, are you.

4 MR. FISHER: I move for a mistrial, your
5 Honor, at this time.

6 THE COURT: You move for a mistrial.

7 MR. FISHER: Yes.

8 MR. CURRAN: That is opposed, your Honor.
9 The government's position is that your Honor should give
10 the jury the Allen charge.

11 MR. FISHER: I would like to invite your
12 Honor's attention to the language in United States against
13 Jacobson, Second Circuit, 1973, where the Court of Appeals
14 pointed out that long and protracted deliberations
15 after the jury has twice announced that it was dead-
16 locked are improper. I object strenuously to an
17 Allen charge. They have been here five days, at least
18 two of which they have been considering this case.
19 I think any verdict now would be the product of coercion
20 rather than reasonable deliberations, and I urgently make
21 an immediate motion for a mistrial, your Honor.

22 MR. CURRAN: Your Honor, as I recall the
23 court exhibits, the first time there was any indication
24 at all from this jury that they had any problem with re-
25 spect to the defendant Tolopka was at 3:30 p.m. this after-

1 jha68

2 noon. I think it was Court Exhibit 113 or 114. Your
3 Honor then sent the jury back. I suppose they have
4 only been deliberating perhaps an hour to an hour and a
5 half.

6 I submit, your Honor, there is no indication,
7 except in this very last note which your Honor just read,
8 of anything like a deadlock. I think in the light of
9 the record in the case and the inquiries and the
10 testimony that has been read and everything else, your
11 Honor, that an Allen charge in this situation is in
12 order.

13 MR. FISHER: If your Honor please, the
14 jury asked for every bit of testimony, summation and
15 charge with regsrds --

16 THE COURT: I was here.

17 MR. FISHER: All right. It appears Mr.
18 Curran wasn't. They have been considering this case for
19 at least two solid days, your Honor.

20 THE COURT: All right. Where is the de-
21 fendant Frank Russo?

22 MR. DOWD: Here, your Honor.

23 THE COURT: I am going to continue him on
24 bail.

25 MR. DOWD: Thank you very much, your Honor.

1 jha69

2 DEFENDANT RUSSO: Thank you very much.

3 MR. DOWD: Do you think the probation office
4 will still be open.

5 THE COURT: I doubt it. Nine o'clock
6 tomorrow morning.

7 MR. DOWD: Thank you very much, your Honor.

8 MR. RICHMAN: My apologies, your Honor.
9 I had to get my car keys before the lot closed.

10 THE COURT: Mr. Fisher has moved for a mis-
11 trial on the basis of a note from the jury. I assume
12 that you reaffirm that motion.

13 MR. RICHMAN: I certainly do, sir.

14 THE COURT: Take a look at the note before
15 you do.

16 Mrs. Rosner, we come now to count 2 of
17 the indictment. As you will recall, I told everybody
18 at the beginning of this case that I was bifurcating count
19 2. I explained what I meant by bifurcating.

20 We are now at the point of the trial where the
21 jury is to be asked once again to deliberate, to deliberate
22 on count 2.

23 I guess the question is, first, whether you
24 want to sum up on it.

25 MRS. ROSNER: I understood, your Honor, that

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point of bifurcating is to avoid prejudicial overflow from the trial together of the factual issues involved in count 2 with the other counts.

May I make this further commentary, your Honor: When we were heard in chambers some days ago on the procedure to be followed in trying count 2 I argued to your Honor that as a matter of law the jury could not possibly be open-minded with respect to the issues involved in count 2 having concluded 90 per cent of the facts involved in count 2 against the defendant by virtue of the guilty verdict on counts 1 and all the other substantive counts.

I would stress, your Honor, that that is essentially an argument as a matter of law, that the jury could not possibly be fair and open-minded, and we adhere to that position.

But there is a second position, your Honor. Certainly at the very least we are entitled to voir dire the jury.

THE COURT: As to what?

MRS. ROSNER: As to whether they feel they could be fair and impartial with respect to a further count on a man whom they have already convicted. Certainly the possibility exists that the jurors themselves

1 jha70

2 by bifurcation you meant that the evidence relevant
3 to count 2 would be given to the jury after the main
4 trial, a procedure which, of course, we reserve objection
5 to. But as was said earlier in conference, I have not
6 cross examined or adduced evidence with respect to count
7 2 during the trial of the main case. I understood that
8 that was the reason for severing it, that it would be
9 prejudicial to try it together.

10 THE COURT: It was never severed. It was
11 bifurcated.

12 MRS. ROSNER: Perhaps severance is the wrong
13 word. I understood that your Honor did not want to
14 prejudice Mr. Inglese with respect to count 2 by giving
15 to the jury the issues of fact and law involved in that
16 count for their deliberation at the same time with the
17 conspiracy and substantive counts. Therefore, your
18 Honor, I did not cross examine or adduce evidence under
19 that count.

20 If your Honor requires us to go forward at this
21 time, I would ask that the evidentiary part of the
22 trial be reopened so that the proper arguments by way
23 of cross examination and defense evidence may be made to
24 the jury. It seems to me that it makes no sense
25 simply to reserve summation. It seems to me the only

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2 don't feel, either because of the tremendous stress and
3 long period of sequestration that they have already
4 undergone or because their minds have overridden the
5 presumption of innocence on all the other counts, that
6 they can possibly sit fairly, and we are certainly entitled
7 to that inquiry, Judge. We can't presume as a mat-
8 ter of law that they are open-minded after they convict him
9 on facts which are essential to count 2 as well. We
10 can't presume they are going to adhere to the presumption
11 of innocence on that count to which Mr. Inglesse is certain-
12 ly entitled.

13 It seems to me, Judge -- may I suggest this
14 procedure -- it seems to me that the absolute fairest way
15 to proceed with this count if the government adheres to
16 its position that they wish to proceed after the convic-
17 tion on some 15 counts already --

18 THE COURT: How many counts?

19 MRS. ROSNER: He was named on at least 16
20 counts and he was found guilty on each and every one.
21 It seems to me that the only fair and reasonable thing to
22 do is to sever that count for trial before a new jury.
23 It is insane, your Honor, to press these people any fur-
24 ther. They have been deliberating five days after a
25 nine-week trial and the sheer numerical possibility

1 jha73

2 that they can sit fairly and impartially and with open
3 minds on a related count is just overridden by all the
4 other circumstances known to us. There is just too
5 much at stake, Judge. Frankly, I don't know that
6 I could function effectively on a traffic ticket right
7 now. I am just emotionally and physically worn out.

8 MR. PHILLIPS: Your Honor, there is not really
9 much the government can respond to. The count is in the
10 indictment. Your Honor bifurcated it. Mrs. Rosner
11 was aware of that. She has not indicated what
12 evidence or type of evidence she would present with
13 respect to this particular count. The government
14 has no additional evidence that it intends to introduce.
15 The government is prepared to proceed with respect to
16 this particular count. We intend solely to argue to the
17 jury that the facts established during the course of this
18 trial show Inglese's guilt on count No. 2.

19 MRS. ROSNER: If I may respond, your Honor,
20 for instance, in the trial of the other counts it would
21 have been wholly inappropriate for me to summon witnesses
22 addressed to count 2, but at this juncture, Judge, I
23 would call Mr. Pellegrino, who was severed as a de-
24 fendant here, who was one of the persons named in the
25 bill of particulars as one of the statutory five who Mr.

1 jha74

2 Inglese supervised, I would call Delvecchio, Lentini,
3 who have already pled guilty and, under United States
4 against Sanchez in the Second Circuit, no longer have a
5 Fifth Amendment right to refuse to testify. There are
6 a host of witnesses because there are 11 people named in
7 the bill of particulars as those who Mr. Inglese super-
8 vised and only, if my count is correct, two of those
9 people appeared as government witnesses. There are
10 nine other relevant witnesses on that count, your Honor,
11 that I am entitled to bring to court and adduce evidence
12 from.

13 So Mr. Phillips' remarks to the effect that
14 I haven't shown what I would do with respect to the
15 trial of count 2 I think are adequately answerable.

16 Before your Honor rules on the applications
17 that were made, would your Honor consider hearing us in
18 chambers off the record?

19 THE COURT: Yes, sure. Come on in.

20 (Recess.)

21 THE COURT: Mr. Richman, I gather you are
22 still moving for a mistrial on the basis of Court's
23 Exhibit 115 for identification.

24 MR. RICHMAN: I am, sir.

25 THE COURT: Mr. Curran, you are opposing

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2 it.

3 MR. CURRAN: Yes, your Honor. The
4 government's position is the same. The note reads
5 that the jury is hopelessly deadlocked. I believe they
6 are.

7 Under the circumstances, the motion for a
8 mistrial is granted.

9 MR. RICHMAN: Thank you, sir.

10 THE COURT: As perhaps you know, I am like
11 all human beings, somewhat reluctant to admit my mistakes.
12 If I had it to do over again I would never have even sugges
13 bifurcating count 2. I would have sent it to the
14 jury to begin with.

15 However, I did, and that was a mistake. I
16 would never do it again.

17 Mrs. Rosner, do you still move to sever count
18 2?

19 MRS. ROSNER: That is our application, your
20 Honor.

21 THE COURT: All right. I assume the gover
22 nment opposes it.

23 MR. CURRAN: Yes, your Honor.

24 THE COURT: The motion is granted.

25 I believe that that ends up our proceedings

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2 for today.

3 MR. PHILLIPS: The jury has to be excused.

4 THE COURT: You don't need to excuse them.
5 I can do it by myself.

6 MR. CURRAN: Your Honor, there is one
7 other item of business.

8 THE COURT: Is there?

9 MR. CURRAN: Yes, there is. I don't
10 know whether it can be done right now. I don't think
11 we scheduled a hearing on the 849 informations, three
12 of which were filed with the court on I believe January
13 18th. They relate to the defendants Tramunti, DiNapoli
14 and Pugliese. I apologize to the court for not
15 raising this when the defendants and their lawyers were
16 present. I forgot about it.

17 THE COURT: I will take care of it, but I
18 will do it in writing, and both you and defense counsel
19 will know about it at the same time.

20 MR. CURRAN: All right, sir. We will
21 have a little bit of notice?

22 THE COURT: Oh, sure.

23 MR. CURRAN: Thank you, your Honor.

24 THE COURT: All right.

25 MRS. ROSNER: Your Honor, I have an appli-

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cation. I would ask that the United States attorney not seek to speak with or interview Mr. Inglese out of my presence.

THE COURT: Does that require a response?

MRS. ROSNER: No. I am just putting it on the record, Judge.

(Adjourned to Monday, April 22, 1974, at 10:00 a.m., for sentencing.)

